

1 SEDGWICK LLP
Robert F. Helfing (Bar No. 090418)
2 robert.helfing@sedgwicklaw.com
Heather L. McCloskey (Bar No. 193239)
3 heather.mccloskey@sedgwicklaw.com
801 South Figueroa Street, 19th Floor
4 Los Angeles, CA 90017-5556
Telephone: (213) 426-6900
5 Facsimile: (213) 426-6921

6 Attorneys for Defendant
McKEON PRODUCTS, INC.
7

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10
11 MOLDEX-METRIC, INC., a
California corporation,
12
13 Plaintiff,
14 v.
15 McKEON PRODUCTS, INC., a
Michigan corporation,
16 Defendants.

Case No. CV11-01742 GHK (AGR_x)

**ANSWER OF DEFENDANT
McKEON PRODUCTS, INC. TO
AMENDED COMPLAINT;
DEMAND FOR JURY TRIAL**

17
18 Defendant McKeon Products, Inc. answers the Amended Complaint as
19 follows:

- 20 1. Defendant admits each and every allegation of ¶ 1.
21 2. Defendant admits each allegation of ¶ 2.
22 3. Defendant lacks sufficient information and belief to admit or deny
23 the allegations in ¶3 and on that basis denies them.
24 4. Defendant admits each allegation of ¶ 4.
25 5. Defendant admits that this Court has personal jurisdiction over itself,
26 that it conducts business in the State of California and that it has established
27 minimum contact with the State of California. Except as expressly admitted,
28 defendant denies generally and specifically each allegation of ¶ 5.

1 6. Defendant admits each allegation of ¶ 6.

2 7. Defendant denies that Moldex has ever used a bright green color to
3 identify its earplugs or to distinguish them from others, and further denies that any
4 shade of green used by Moldex is a trademark. Defendant is without sufficient
5 information or belief to admit or deny any other allegations of ¶ 7 and, on that
6 basis, denies generally and specifically each such allegation.

7 8. Defendant denies generally and specifically each and every allegation
8 of ¶ 8.

9 9. Defendant denies generally and specifically each and every allegation
10 of ¶ 9.

11 10. Defendant denies generally and specifically each and every allegation
12 of ¶ 10.

13 11. Defendant admits the allegations as to defendant McKeon and denies
14 the remaining allegations in ¶ 11.

15 12. Defendant admits that it marketed and sold the accused products, but
16 denies that the accused products were all introduced in the past year. Defendant
17 denies generally and specifically each and every other allegation of ¶ 12.

18 13. Defendant denies generally and specifically each and every allegation
19 of ¶ 13.

20 14. Defendant is without sufficient information or belief to admit or deny
21 the allegations of ¶ 14 and, on that basis, denies generally and specifically each
22 such allegation.

23 15. Defendant denies generally and specifically each and every allegation
24 of ¶ 15.

25 16. Defendant incorporates herein each response to ¶¶ 1 – 15, and
26 reasserts each such response in response to ¶ 16.

27 17. Defendant denies generally and specifically each and every allegation
28 of ¶ 17.

1 18. Defendant denies generally and specifically each and every allegation
2 of ¶ 18.

3 19. Defendant denies generally and specifically each and every allegation
4 of ¶ 19.

5 20. Defendant denies generally and specifically each and every allegation
6 of ¶ 20.

7 21. Defendant denies generally and specifically each and every allegation
8 of ¶ 21.

9 22. Defendant denies generally and specifically each and every allegation
10 of ¶ 22.

11 23. Defendant incorporates herein each response to ¶¶ 1 – 22, and
12 reasserts each such response in response to ¶ 23.

13 24. Defendant denies generally and specifically each and every allegation
14 of ¶ 24.

15 25. Defendant denies generally and specifically each and every allegation
16 of ¶ 25.

17 26. Defendant denies generally and specifically each and every allegation
18 of ¶ 26.

19 27. Defendant denies generally and specifically each and every allegation
20 of ¶ 27.

21 28. Defendant denies generally and specifically each and every allegation
22 of ¶ 28.

23 29. Defendant incorporates herein each response to ¶¶ 1 – 28, and
24 reasserts each such response in response to ¶ 29.

25 30. Defendant denies generally and specifically each and every allegation
26 of ¶ 30.

27 31. Defendant denies generally and specifically each and every allegation
28 of ¶ 31.

1 32. Defendant denies generally and specifically each and every allegation
2 of ¶ 32.

3 33. Defendant denies generally and specifically each and every allegation
4 of ¶ 33.

5 34. Defendant incorporates herein each response to ¶¶ 1 – 33, and
6 reasserts each such response in response to ¶ 34.

7 35. Defendant denies generally and specifically each and every allegation
8 of ¶ 35.

9 36. Defendant denies generally and specifically each and every allegation
10 of ¶ 36.

11 37. Defendant denies generally and specifically each and every allegation
12 of ¶ 37.

13 38. Defendant incorporates herein each response to ¶¶ 1 – 37, and
14 reasserts each such response in response to ¶ 38.

15 39. Defendant admits that Moldex has granted no license or permission
16 for McKeon to market earplugs bearing any shade of green. Defendant denies
17 generally and specifically each and every other allegation of ¶ 39, and in particular
18 denies that Moldex has any proprietary rights in any shade of green for earplugs
19 and further denies that McKeon needs a license or permission from Moldex in
20 order to lawfully market earplugs bearing any shade of green.

21 40. Defendant denies generally and specifically each and every allegation
22 of ¶ 40.

23 41. Defendant denies generally and specifically each and every allegation
24 of ¶ 41, and in particular denies that it has suggested a connection with or
25 sponsorship by Moldex by marketing earplugs bearing the color green, or by any
26 other action.

27 42. Defendant denies generally and specifically each and every allegation
28 of ¶ 42.

1 43. Defendant denies generally and specifically each and every allegation
2 of ¶ 43.

3 44. Defendant denies generally and specifically each and every allegation
4 of ¶ 44.

5 **AFFIRMATIVE DEFENSES**

6 **FIRST AFFIRMATIVE DEFENSE**

7 45. The claims for relief fail to state facts sufficient to support a claim.

8 **SECOND AFFIRMATIVE DEFENSE**

9 46. The claims for relief are barred by the applicable statute of limitations.

10 **THIRD AFFIRMATIVE DEFENSE**

11 47. The claims for relief are barred by the doctrine of laches.

12 **FOURTH AFFIRMATIVE DEFENSE**

13 48. The claims for relief are barred by the doctrine of waiver.

14 **FIFTH AFFIRMATIVE DEFENSE**

15 49. The claims for relief are barred by the doctrine of estoppel.

16 **SIXTH AFFIRMATIVE DEFENSE**

17 50. The claims for relief, or one or more remedies, are barred by the
18 doctrine of unclean hands.

19 **SEVENTH AFFIRMATIVE DEFENSE**

20 51. The remedies sought by the claims for relief are limited or precluded
21 by its failure to mitigate its losses.

22 **EIGHTH AFFIRMATIVE DEFENSE**

23 52. Plaintiff is not entitled to any recovery against defendant because any
24 harm incurred by plaintiff was the result of conduct by third parties for whom
25 defendant was not responsible.
26
27
28

NINTH AFFIRMATIVE DEFENSE

53. Plaintiff is not entitled to any recovery against defendant because plaintiff caused or contributed to the alleged injuries or damages by its own negligent, intentional, willful or bad faith conduct.

TENTH AFFIRMATIVE DEFENSE

54. Plaintiff's claims are barred because plaintiff has misused its intellectual property rights.

WHEREFORE, defendant prays for judgment on the Complaint as follows:

1. That plaintiff take nothing by way of the Complaint;
2. For costs of suit and attorneys' fees incurred herein; and
3. For such other and further relief as this Court deems just and proper.

Dated: September 15, 2011

SEDGWICK LLP

By: /s/ Heather L. McCloskey

Robert F. Helfing
Heather L. McCloskey
Attorneys for Defendant
McKEON PRODUCTS, INC.

DEMAND FOR JURY TRIAL

Defendants demand a jury trial on all issues so triable.

Dated: September 15, 2011

SEDGWICK LLP

By: /s/ Heather L. McCloskey

Robert F. Helfing
Heather L. McCloskey
Attorneys for Defendant
McKEON PRODUCTS, INC.